UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZT LEASING, INC. and ALTUS HMS II, LP Plaintiffs, -against- HUDSON 805, LLC, BARNET LIBERMAN, and the BOARD OF MANAGERS of the PRINTING HOUSE CONDOMINIUM Defendants.	)	_______ Civ. ___________(____) **COMPLAINT** **JURY DEMANDED**

Plaintiffs ZT Leasing, Inc. ("ZT") and Altus HMS II, LP ("Altus") (collectively "Plaintiffs") together file this Original Complaint against defendants Hudson 805, LLC ("Hudson"), Barnet Liberman ("Liberman"), and the Board of Managers of the Printing House Condominium ("Printing House Board") and would show the following:

I. Parties

1. Plaintiff ZT Leasing, Inc. ("ZT") is a foreign corporation duly organized and existing under the laws of the state of Texas. ZT's principal place of business is located in Houston, Texas.

2. Plaintiff Altus HMS II, LP ("Altus") is a foreign limited partnership duly organized and existing under the laws of the state of Texas. The principal place of business for Altus is located in Houston, Texas.

3. Defendant Hudson 805, LLC ("Hudson") is a limited liability company duly organized and existing under the laws of the state of New York. Hudson's principal place of business is located in New York County. Hudson may be served by serving its statutory agent, New York Secretary of State, Hon. Rossana Rosado, at One Commerce Plaza, 99 Washington

Avenue, Albany, New York 12231 to be forwarded to Hudson's registered office address, Dune Alpin Farm, 10 Palomino Court, East Hampton, New York 11937.

4. Defendant Barnet Liberman ("Liberman") is an individual residing in the state of New York. Liberman may be served at his home address, 421 Hudson Street, Unit 805, New York, New York 10014 or wherever he may be found.

5. Defendant Board of Managers of the Printing House Condominium ("Printing House Board") is the duly constituted Board of Managers of the Printing House Condominium located at 421 Hudson Street, New York, New York 10014. The Printing House Board was established pursuant to Article 9-B of the Real Property Law ("RPL") of the State of New York.

II. Jurisdiction and Venue

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(a)(1) because there is diversity of citizenship between the parties and the amount of controversy exceeds $75,000, exclusive of interest and costs.

7. Venue is proper before this Court under 29 U.S.C. §1391(b)(2) because all defendants reside in this judicial district, and because a substantial part of the events giving rise to this claim occurred in this judicial district. Further, venue is proper because the real property that is the subject of this action is situated in this judicial district.

III. Introduction

8. This is a lawsuit for permanent injunction and monetary damages stemming from losses sustained as a result of repeated water intrusion events that flooded into Plaintiffs' condominium unit. The source of the leaks was an enormous indoor goldfish pond located in the condominium unit owned and controlled by defendants Hudson and Liberman, hereinafter collectively referred to as the "Unit 805 Defendants." Due to the Unit 805 Defendants' failure to

properly install, inspect, or maintain the pond, water from the pond flooded and intruded onto Plaintiffs' unit on December 4, 2015, causing Plaintiffs' unit to sustain over $163,000 of structural damage. The Unit 805 Defendants' improper installation and use of the defective, leak-prone pond violated a number of the bylaws and house rules that the Printing House Board was supposed to enforce.

9. Despite having notice of the leaky pond and the many bylaw and house rule violations committed by the Unit 805 Defendants, the Printing House Board failed to take proper remedial action. Alarmingly, following the first flooding event, despite having knowledge of the defective, leaky pond, the Unit 805 Defendants and the Printing House Board each failed to ensure that the pond was properly repaired. As a result of all defendants' collective failure to ensure that the pond was properly repaired, maintained, or inspected, on March 29, 2016, the pond leaked *again* into Plaintiffs' unit, causing over $61,000 of additional structural damage. Due to the repeated leaking events, Plaintiffs fear that the defective, leak-prone pond will likely leak again and continue to cause damage to Plaintiffs' unit.

10. Plaintiffs have suffered substantial loss resulting from the repeating leaks from the pond. Not only did Plaintiffs suffer loss of use of the unit while it was being repaired, the repairs took even longer to complete because of the second leak that further damaged the unit. Despite repeated requests, the Unit 805 Defendants have continually refused to pay for Plaintiffs' actual, special, and consequential damages. To this date, Plaintiffs have not been fully compensated for losses sustained for miscellaneous structural repairs, lost rents, association fees, dining out charges, lodging expenses, utilities, and construction consulting fees.

IV. Factual Background

11. On or about August 1, 2013, ZT purchased its condominium unit, #704, located at 421 Hudson Street, New York, New York 10014.

12. Unit 704 is a 1,899 square foot two bedroom, two bath condominium unit located in the Printing House Condominium, a luxury eight-story residential building on Hudson Street in Manhattan.

13. On or about May 1, 2014, ZT leased Unit 704 to Altus for a period of ten (10) years at the rate of $29,000.00 per month.

14. On information and belief, Hudson owns Unit 805, located at 421 Hudson Street, New York, New York 10014.

15. On information and belief, Liberman resides in Unit 805 and leases it from Hudson.

16. The Printing House Board collects fees and common charges from the unit owners of the Printing House Condominium. The Printing House Board oversees the rules, regulations, and by-laws concerning the condominium, and is in charge of the enforcement of those rules, regulations, and by-laws.

17. On or before December 4, 2015, Liberman and Hudson, hereinafter the "Unit 805 Defendants," installed an enormous indoor goldfish pond in Unit 805. The indoor goldfish pond is unusually large and covers the floor of a room the size of an office.

18. Plaintiffs' Unit 704 is located directly below the goldfish pond located inside Unit 805.

19. On December 4, 2015, the pond leaked, causing severe water damage to Unit 704.

20. Among other things, the leak caused structural damage to the flooring, the stairway, and sheetrock.

21. As a result of the damage to Plaintiffs' condominium unit, the tenants, guests, and users of Plaintiffs' Unit 704 were displaced and forced to find alternative lodging and work space, causing ZT to incur additional monetary expenses.

22. ZT hired contractors and other professionals to make repairs to the flooring, stairs, and sheetrock.

23. Following this first leak, the Unit 805 Defendants and the Printing House Board each had notice and knowledge of the defective, leak-prone pond.

24. On January 29, 2016, the Unit 805 Defendants' insurance carrier issued a partial payment of $101,636.43 to reimburse ZT for some of the repair expenses it incurred as a result of the December 4, 2015 flooding.

25. Then *again*, on March 29, 2016, the indoor goldfish pond in Unit 805 leaked once more, causing further water damage to Unit 704. The damage caused by the second leak required more work that delayed completion of the repairs to the condo.

26. As a result, the tenants and guests of Plaintiffs' Unit 704 continued to be displaced, forcing ZT to incur further monetary expenses for alternative lodging, work space, dining, and more.

27. Once again, ZT hired contractors and other professionals to make repairs to the flooring, stairs, and sheetrock that were damaged by the second flooding event caused by the Defendants.

28. Even *after* the *second* water intrusion event caused by the Unit 805 Defendants' leak-prone pond, Defendants each failed to take the necessary steps to ensure that the defects in the pond were properly repaired. In fact, the Unit 805 Defendants continued to receive citations for code violations relating to the pond by the New York City Department of Buildings ("NYC

DOB"). Specifically, on April 22, 2016, an NYC DOB inspector issued citations to the Unit 805 Defendants for their "FAILURE TO MAINTAIN BLDG IN CODE COMPLIANT MANNER" and because "STANDING POND WATER IN UNIT 805 EXCEEDS LIVE LOAD CAPICITY (sic) OF FLOOR (DESIGN STRENGTH)." Despite knowledge of Unit 805 Defendants' continuing violations of the building code and the by-laws, rules, and regulations for the condominium, the Printing House Board failed to take remedial action.

29. On April 20, 2016 and on September 30, 2016, the insurance carrier for the Unit 805 Defendants issued partial payments to ZT (in the amounts of $62,281.96 and $61,862.99 respectively). These partial payments reflected reimbursement for only *some* of the total unpaid losses that occurred as a result of the first and second flooding events.

30. To date, despite repeated requests for payment of the remaining outstanding losses suffered as a result of the multiple pond leaks, the Unit 805 Defendants and their insurance carrier have refused to fully compensate Plaintiffs for those unpaid losses.

31. By November 7, 2016, the Unit 805 Defendants were still being cited for building code violations relating to the pond by the NYC DOB. Specifically, Hudson was cited by the NYC DOB for failing to file a report indicating "CORRECTION OF UNSAFE CONDITIONS" found in Unit 805.

IV. Causes of Action

32. For all counts asserted, Plaintiffs allege that the Unit 805 Defendants committed the wrongful conduct complained of herein with knowledge, gross negligence, intent, and/or malice, and as a result thereof, Plaintiffs are entitled to receive additional and/or exemplary damages.

33. For all counts asserted, Plaintiffs allege that in all of the conduct complained of herein, all employees, servants, agents, and representatives of Liberman, Hudson, and the Printing House Board, had actual, implied, or apparent authority to act on the respective behalf of that Defendant.

34. For all counts asserted, Plaintiffs allege that Defendants are jointly and severally liable for all acts complained herein.

35. For all counts asserted, Plaintiffs allege that all conditions precedent to recovery herein have been performed or have occurred and that each cause of action alleged herein is plead additionally and alternatively.

COUNT 1: NEGLIGENCE

As to All Defendants

36. Plaintiffs repeat and incorporate, by reference, the allegations of Paragraphs 1 through 35 as if fully set forth herein.

37. Each of the Defendants bear a duty under the laws of the state of New York to exercise reasonable care to avoid foreseeable risk of injury to others; a duty to keep their condominium safe; a duty to take reasonable precautions to avoid injuring persons and property on adjoining premises; and a duty to use ordinary care when making repairs. By failing to properly install, inspect, repair, and maintain the indoor goldfish pond, Defendants breached their duties to Plaintiffs. Defendants' breach of duties proximately caused injury to Plaintiffs.

38. Further, the Printing House Board bears a duty to the unit owners to enforce the by-laws, rules, and regulations of the condominium, and to abate and enjoin violations committed by unit owners. Despite having notice and knowledge of the dangerous pond that violated New York City's building code and the by-laws, rules, and regulations of the condominium, the Printing

House Board failed to take proper remedial measures to ensure that the leaky, defective pond was repaired and in compliance with all governing regulations. The Printing House Board breached its duty of care to Plaintiffs by failing to take remedial measures, proximately causing injury to Plaintiffs.

COUNT 2: NUISANCE

As to Liberman and Hudson (the Unit 805 Defendants)

39. Plaintiffs repeat and incorporate, by reference, the allegations of Paragraphs 1 through 35 as if fully set forth herein.

40. At all material times, ZT owned Unit 704 of the Printing House Condominium.

41. At all material times, Altus leased Unit 704 from ZT.

42. The Unit 805 Defendants created a nuisance by their installation of, and their failure to inspect and maintain, a leaky and defective indoor goldfish pond. The goldfish pond repeatedly leaked into Unit 704 on two separate occasions causing severe water damage. ZT corresponded with the Unit 805 Defendants (as well as the Printing House Board) requesting that the nuisance be abated. Despite their knowledge of the nuisance created by the leaky goldfish pond in their unit, Hudson and Liberman refused to take corrective action to adequately repair the pond or otherwise abate the nuisance. By their actions, conduct, and omissions, the Unit 805 Defendants have created a private nuisance actionable under the common law of the state of New York and §841 N.Y. Real Property Actions and Proceedings Law.

43. *Intentional and Unreasonable Invasion.* Pleading further and in the alternative, the Unit 805 Defendants intentionally and unreasonably invaded Plaintiffs' interest in the private use and enjoyment of Unit 704 by installing a defective, leak-prone indoor goldfish pond and by failing to properly inspect and maintain the pond. The Unit 805 Defendants knew that installing

and using the enormous goldfish pond within a residential condominium unit would result (or was substantially certain to result) in water intrusion into the Plaintiffs' unit below. The indoor goldfish pond did, in fact, repeatedly leak into Plaintiffs' unit below, proximately causing injury to Plaintiffs.

44. After the first leak into Plaintiffs' unit, the Unit 805 Defendants knew that the indoor goldfish pond was certain to leak again with its continued usage. Indeed, they received numerous citations by the NYC DOB informing them of the "unsafe conditions" created by the non-code-compliant pond. Nonetheless, the Unit 805 Defendants intentionally and unreasonably continued to use the indoor goldfish pond and failed to take any reasonable precautions that would prevent additional water intrusion into Plaintiffs' unit. As a result of Defendants' acts and omissions, the indoor pond leaked *again* into Plaintiffs' unit, causing further injury to Plaintiffs.

45. *Negligent and Reckless Invasion.* Pleading further and in the alternative, the Unit 805 Defendants negligently and recklessly invaded Plaintiffs' interest in the private use and enjoyment of Unit 704 by failing to properly install, repair, inspect, and maintain the massive leak-prone indoor goldfish pond. The Unit 805 Defendants have a duty to exercise reasonable care to avoid a foreseeable risk of injury to others; a duty to keep their condominium safe; a duty to take reasonable precautions to avoid injuring persons and property on adjoining premises; and a duty to use ordinary care when making repairs. By installing a large and leaky indoor goldfish pond, and by failing to adequately inspect, maintain, and make repairs to the pond, the Unit 805 Defendants breached their duties to Plaintiffs. Their acts and omissions proximately caused injury to Plaintiffs.

46. In addition, after the dangerous condition manifested itself by leaking into Plaintiffs' unit, the Unit 805 Defendants negligently or knowingly failed to make adequate repairs

or otherwise abate a *known* dangerous condition which resulted in yet *another* water intrusion into Plaintiffs' unit, proximately causing further injury to Plaintiffs.

47. Defendants' actions and conduct resulted in a private nuisance, which substantially interfered with Plaintiffs' private use and enjoyment of Unit 704. ZT was forced to make repairs to the structure of the unit. Due to the number of water intrusions, ZT had to make repairs not once, but twice within a single year. Further, ZT and Altus were displaced from Unit 704 while repairs were being made. Plaintiffs suffered additional damages as more specifically described below.

COUNT 3: VIOLATION OF §841 RPAPL

As to Liberman and Hudson (the Unit 805 Defendants)

48. Plaintiffs repeat and incorporate, by reference, the allegations of Paragraphs 1 through 35 as if fully set forth herein.

49. Section 841 of the New York Real Property Actions and Proceedings Law ("RPAPL") prohibits a person from erecting a nuisance.

50. By the actions and conduct described herein, Defendants have violated §841 RPAPL by wrongfully erecting a leaky indoor goldfish pond that created a private nuisance that proximately caused injury to Plaintiffs.

REQUEST FOR PERMANENT INJUNCTION

51. As a result of the actions and conduct complained of herein, Plaintiffs are likely to continue to suffer injury on an ongoing basis if the Unit 805 Defendants are not enjoined to remove the massive and leak-prone indoor goldfish pond. There is no adequate remedy at law if relief cannot be obtained without filing multiple lawsuits for damage each and every time the indoor goldfish pond leaks. Plaintiffs ask the court to set this request for injunctive relief for full

trial on the issues, and after the trial, to issue a permanent injunction requiring the removal of the indoor goldfish pond, and prohibiting any other pond from being erected within Unit 805, 421 Hudson Street, New York, New York 10014.

DAMAGES

52. As a result of the actions and conduct complained of herein, ZT was forced to make repairs to the damaged structure of Unit 704. ZT repaired the flooring, the stairway, and sheetrock. Due to the number of water intrusions, ZT had to make continuous repairs within a single year. While repairs were being made, Plaintiffs lost the use of Unit 704 since it was uninhabitable. ZT and Altus were forced to cancel business meetings scheduled at the unit, obtain alternate lodging for executives, and incur costs that would have not otherwise been incurred. Accordingly, Plaintiffs are entitled to the recovery of all actual, incidental, special and consequential damages sustained in an amount that exceeds the minimum jurisdictional limits of this Court.

53. Specifically, ZT and Altus claim as actual, special and consequential damages:

a. unpaid structural damages in the amount of $8,387.50;

b. unpaid loss of the reasonable value of the unit from December 4, 2015 through December 6, 2016 in the amount of $290,000;

c. unpaid association fees incurred from December 4, 2015 through December 6, 2016 in the amount of $13,181.55;

d. unpaid utilities incurred at the unit from December 4, 2015 through December 6, 2016 in the amount of $2,150.13;

e. unpaid lodging incurred as a result of loss of use of the unit from December 4, 2015 through December 6, 2016 in the amount of $104,955.33;

f. unpaid dining expense due to the loss of use of the kitchen from December 4, 2015 through December 6, 2016 in the amount of $2,189.80; and

g. unpaid construction consultation fees for the repairs to the unit in the amount of $19,250.00.

54. Plaintiffs are further entitled to the recovery of exemplary damages due to the grossly negligent, intentional, and/or malicious actions and conduct of Defendants.

55. As a result of the actions and conduct complained of herein, Plaintiffs are further entitled to the recovery of pre-judgment and post-judgment interest herein at the maximum amount allowed by the common and statutory laws of the state of New York.

56. Plaintiffs are further entitled to the recovery of costs of court.

DEMAND FOR JURY TRIAL

57. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on all issues triable by jury.

PRAYER

58. WHEREFORE, Plaintiffs ZT Leasing, Inc. ("ZT") and Altus HMS II, LP ("Altus"), pray that defendants Hudson 805, LLC ("Hudson"), Barnet Liberman ("Liberman"), and the Board of Managers of the Printing House Condominium ("Printing House Board"), be cited to appear and answer herein, and that upon full and final trial herein, Plaintiffs recover from Defendants jointly and severally, all actual, incidental, special, and consequential damages sustained as a result of the actions of Defendants, along with additional exemplary damages, and damages attributed to costs of court, pre-judgment and post-judgment interest, and for the Court to grant permanent injunctive relief requiring Defendants to remove the indoor goldfish pond and be enjoined from

further use or installation of any such pond in Unit 805, 421 Hudson Street, New York, New York, 10014, and for such other relief that may be properly awarded by this Court.

Respectfully Submitted,

/s/ Jeanine Navarro

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